



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF VERIFIED PETITION OF)
CLOSECALL AMERICA INC. FOR APPROVAL TO)
PROVIDE LOCAL EXCHANGE AND)
INTEREXCHANGE TELECOMMUNICATIONS)
SERVICES WITHIN THE STATE OF NEW JERSEY)

ORDER

DOCKET NO. TE04030202

(SERVICE LIST ATTACHED)

BY THE BOARD¹:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated March 24, 2004, CloseCall America Inc. ("Petitioner" or "CloseCall America") filed a verified Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide facilities-based and resold local exchange and interexchange telecommunications services in the State of New Jersey. Petitioner has submitted its financial information under seal and has included a sworn affidavit with substantiation for confidential treatment in accordance with the Board's rules for determining confidentiality, N.J.A.C. 14:1-12 et seq. and in compliance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

CloseCall America is a privately held corporation organized under the laws of the State of Maryland. Petitioner's principal offices are located at 101A Log Canoe Circle, Stevensville, Maryland 21666. Viventures Partners SA, CloseCall Partners (Part of Spencer Trask) and CloseCall America's Employees owns 31%, 28% and 41% of CloseCall America, respectively. Viventures Partners is a venture capital firm which vies for investments in internet and telecommunications infrastructure companies. Viventures Partners is partially funded by Vivendi Universal, which owns approximately one-third of Viventures Partners. CloseCall Partners is a group within Spencer Trask, the other principal owner. Spencer Trask is a New York-based leading venture capital firm which invests in early stage and emerging growth companies in the communications, information technology and life sciences fields.

Petitioner has submitted copies of its Certification of Incorporation and Certificate in Good Standing from the State of Maryland and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. According to the Petition, CloseCall America was formed to provide facilities-based and resold local exchange and interexchange telecommunications services throughout New

¹ Commissioner Frederick F. Butler did not participate in the deliberation or the vote on this matter.

Jersey. Petitioner states that it is authorized to provide facilities-based and resold local exchange and interexchange telecommunications services in the State of Maryland, Delaware and Indiana and is approved to provide resold local exchange and interexchange services in the State of Wisconsin. Petitioner states that it is also approved to provide resold interexchange services in the State of California. Petitioner states that it has entered into a Resale Agreement with Verizon – New Jersey, Inc. to provide resold local and interexchange services in New Jersey which was approved by the Board on October 10, 2003.

Petitioner seeks authority to provide facilities-based and resold local exchange and interexchange telecommunications services to both business and residential customers throughout the State of New Jersey. Petitioner states that its services may include, but are not necessarily limited to, all local exchange services, optional features excluding voicemail and regional toll and long distance calling services in all territories served by Verizon – New Jersey, Inc. Petitioner states that it does not own facilities in New Jersey at this time, however, it will utilize incumbent local exchange carriers' facilities to provide the aforementioned services. Petitioner further states that in the future, if market conditions permit, it may offer services utilizing its own facilities. Petitioner states that there are no outstanding formal or informal complaints pending against it before any state or federal regulatory commission. Petitioner states that it will file a tariff for Board approval and it maintains a toll-free number for its customer service inquiries.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3, which require that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Stevensville, Maryland. Petitioner also states, upon written notice from the Board and/or Board Staff, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, CloseCall America states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel who, according to CloseCall America, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). The Board also considers the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services and the Legislature's findings that "competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed CloseCall America's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange and interexchange telecommunications services throughout New Jersey subject to approval of its tariff. The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is approved by the Board.

The Board HEREBY ORDERS that:

- 1) Petitioner file its tariff for Board approval.
- 2) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year. Pursuant to N.J.S.A. 48:2-16.3, if Petitioner fails to file an annual report by the due date, Petitioner shall be subject to a penalty of \$5.00 for each day thereafter until such report is filed.
- 3) Pursuant to N.J.S.A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Audits an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form are due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 5/12/04

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)

KRISTI IZZO
SECRETARY

IN THE MATTER OF VERIFIED PETITION OF CLOSECALL AMERICA INC. FOR
AUTHORITY TO PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES WITHIN THE
STATE OF NEW JERSEY

DOCKET NO. TE04030202

SERVICE LIST

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